

## CHILD SAFETY ACT

This statute protects minor children from harmful contacts and material on interactive computer services.

### Regulatory Gap

- The Communications Decency Act of 1996 was presented as a means of protecting children. But the portion that allegedly would protect children, Section 223, was immediately held unconstitutional—as was a subsequent replacement, Section 231. So there is a regulatory gap, leaving children vulnerable.

### Summary of Statute

- **Parental Consent.** Interactive computer services (including Facebook, Instagram, TikTok, etc.) must get parental consent before contracting with children or providing services to them.
- **Intermediaries to Facilitate Consent.** The services and parents can use intermediaries to obtain or offer consent—so that if parents have consented through an intermediary for their children to access a large category of services, the access can be seamless.
- **Limited Access for Children to a Narrow Range of Material.** Interactive computer services may not give children access to expression that is sexually or violently explicit or that sexually depicts a child.
- **Compatible with Section 230.** Section 230(c)(1) states: “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” But the Child Safety Act carefully does not treat interactive computer services as publishers or speakers.
- **Notice to Parents and Government.** Interactive computer services must warn parents and notify government about sexual threats to children.
- **Only Civil Remedies.** Provides only private civil remedies, not criminal or other governmental proceedings.

### Protects Children without Limiting Free Speech

- **Consent.** In requiring interactive computer services to get parental consent before making contracts with children or giving them access, the statute doesn’t bar any expression from the services. It merely requires informed consent before

children access the services and become vulnerable to dangerous conduct and expression.

- **Expression.** In limiting what types of expression can be shared with children, the statute is very narrowly tailored to compelling government interests, as it focuses on expression that is sexually explicit or violently explicit or that sexually depicts a child. The statute even leaves room for conveying much sexually explicit expression to children—as long as there is parental consent. All of this is very narrow and much more clearly defined than a limit on obscenity.

- **Distinctive Risks from Interactive Computer Services.** Both the parental consent and the expression requirements focus on interactive computer services—for good reason. Children can easily access interactive computer services on their own without parental knowledge, let alone supervision. And parents cannot readily know or evaluate what their minor children have viewed. These considerations (as suggested in *Brown v. Entertainment Merchants Association*) mean that the statute can focus on such services, without violating the First Amendment.